

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 170 – HB 164

April 7, 2013

**SUMMARY OF ORIGINAL BILL:** Replaces references to the Department of General Services” and “Department of Finance and Administration” with the “Central Procurement Office”; replaces “Commissioner of General Services” and “Commissioner of Finance and Administration” with “Chief Procurement Officer”; replaces “supplies, materials, and equipment” with “goods and services”; replaces “department, institution, or agency” with “state governmental agency”; replaces “bids” with “solicitations”; and “bidders” with “respondents.”

Under Tenn. Code Ann. § 12-3-107 the Chief Procurement Officer (CPO) is required to adopt rules and regulations for certain purposes regarding procurement and to submit such rules and regulations to the Procurement Commission for approval. The proposed bill deletes the requirement that the CPO submit such rules and regulations for Commission approval and instead specifies that such matters regarding procurement would be the power and the duty of the CPO.

Tennessee Code Ann. § 12-3-107 also contains provisions for the transfer, distribution, and sale of surplus supplies, materials, and equipment. The proposed bill deletes such provisions.

Tennessee Code Ann. § 4-56-105 specifies the CPO has the authority to delegate authority with the approval of the Comptroller of the Treasury to designees or to any department, agency, or official as prescribed in rules, regulations, standards, and policies approved by the Procurement Commission. The proposed bill replaces “approval of the Comptroller of the Treasury” with “subject to additional approvals.”

Under Tenn. Code Ann. §4-56-108 the Fiscal Review Committee (FRC) has 40 business days from receipt of a proposed non-competitive contract or amendment to review and comment on such document. The proposed bill reduces, from 40 to 20 days, such time period.

Under Tenn. Code Ann. §12-4-110 purchases by and for the legislative department, the University of Tennessee (UT), the state university and community college system, and state technical institutes, and contracts awarded by the State Building Commission (SBC) pursuant to Tenn. Code Ann. § 4-15-102 are exempt, subject to the policies of the Procurement Commission, from the operation of the procurement law. The proposed bill specifies that exemption includes purchases and contracts by the legislative and judicial branches. Adds language that specifies if there is a question whether a contract or procurement required SBC or CPO approval, the CPO and the State Architect shall determine in writing the procurement method or the contract form that is in the best interest of the state. Any such agreement reached by the CPO and the State Architect shall be subject to approval by the Comptroller of the Treasury.

Under Tenn. Code Ann. § 12-4-106 contracts by municipal and public corporations of the state, for legal services, fiscal agent, financial advisor or advisory services, educational consultant services, and similar services by professional persons are not based upon competitive bids, but are awarded on the basis of recognized competence and integrity. The proposed bill extends this provision regarding such professional services to apply to all state entities, instead of only to municipal and public corporations of the state.

Tennessee Code Ann. § 12-3-133 requires each state agency to submit to the CPO an annual acquisition plan for the upcoming fiscal year, by July 1 of each year. The proposed bill requires that such plan be submitted by "April 1", instead of "July 1", of each year and requires that such plan be submitted to the Comptroller, in addition to the CPO. Additionally, the proposed bill authorizes an agency to amend or supplement its acquisition plan before the end of a given fiscal year for unforeseen circumstances pursuant to rules, regulations and policies adopted by the Commission.

Under Tenn. Code Ann. § 12-4-110 any personal services, professional services or consultant services contract entered into by an executive department or agency of the state government must be executed by the head of such department or agency and approved by the CPO. Contracts calling for expenditures from appropriations of more than one fiscal year must be approved by the Comptroller of the Treasury. The proposed bill deletes this provision. Also, current law requires such contracts for financial management or accounting services to be approved by the Comptroller of the Treasury. The proposed bill revises this provision and states such approval must be by the Commissioner of Finance and Administration.

Under Tenn. Code Ann. § 12-4-110 contracts of the University of Tennessee (UT) and the state university and community college system need not be approved by the CPO, but they shall be subject to applicable provisions of the rules described in Tenn. Code Ann. § 12-4-109. The proposed bill revises this provision and specifies that such contract of the UT system and the Tennessee Board of Regents system are subject to the rules and policies promulgated by the CPO and approved by the Procurement Commission.

Under Tenn. Code Ann. § 12-4-110 contracts executed or proposed to be executed for more than 12 months must contain a provision giving the state the right of cancellation at any time with no more than one year's notice, and at the end of any fiscal year without notice, in the event that funds to support the contract become unavailable. The proposed bill states such contract may contain a provision giving the state the right of cancellation for convenience for periods of time established by the CPO and deletes the language "at any time with no more than one year's notice" from such provision.

Tennessee Code Ann. § 12-3-203 authorizes the CPO to reject all bids for a certain purchase only for the following reasons: unreasonably high prices, error in invitation to bid, cessation of need, unavailability of funds, or for any other reason approved by the Procurement Commission. The proposed bill deletes the language "any other reason approved by the Procurement Commission" and replaces it with "any other reason determined to be in the best interest of the state".

Tennessee Code Ann. § 12-3-204 authorizes the Procurement Commission to allow the director of purchases to establish an informal purchasing procedure, including the solicitation of telephone bids, for purchases not exceeding the amount established by the Commission. Such amount may not exceed \$25,000, if the Commission unanimously agrees upon the amount, and may not exceed \$10,000, if the Commission does not unanimously agree on a higher amount. The proposed bill authorizes the Procurement Commission to allow the CPO to establish informal solicitation procedures for procurements. The maximum amount of the procurement would be \$50,000 or less, if all of the members of the Commission agree and \$25,000 or less, if the members of the Commission approve, but not unanimously.

Under Tenn. Code Ann. §12-3-210 any procurement of \$50,000 or less must be approved by the CPO and be made without requisitioning such goods or services through the department, if a source of supply has not otherwise been established. All such procurements must be posted on the Procurement Office's Internet site and must provide certain information, including the status of the order. This bill removes the requirement that such procurements be approved by the CPO and removes the requirement that the information posted on the web site include the status of the order. Currently, such purchases that exceed \$100 or a higher amount, if the Procurement Commission unanimously agrees upon the amount, must, whenever practical, be based upon at least three competitive bids and be made in accordance with the procurement law. The proposed bill removes this provision. The proposed bill authorizes the Procurement Commission to allow the CPO to establish small purchase procedures. The maximum amount of the purchases would be \$10,000 or less, if all the members of the Procurement Commission agree and \$5,000 or less if the members of the Commission approve, but not unanimously.

Generally, any procurement of \$50,000 or less must be approved by the CPO and be made without requisitioning such goods or services through the department, if a source of supply has not otherwise been established. All such procurements must be posted on the Procurement Office's Internet site and must provide certain information, including the status of the order. This bill removes the requirement that such procurements be approved by the CPO and removes the requirement that the information posted on the web site include the status of the order.

Under Tenn. Code Ann. § 12-3-208 a contract may be entered into by competitive negotiation "only in cases when the state is unable to obtain needed goods and/or services by competitive sealed bid". The proposed bill revises this provision to instead specify that a contract may be entered into by competitive negotiation "when it is determined by the CPO that it is in the best interests of the state".

Tennessee Code Ann. § 12-3-216 authorizes the CPO to enter into cooperative purchasing agreements with other states, local governments and higher education institutions, as long as each contract is established through competitive sealed bids and each procurement has the prior approval of the Procurement Commission. The proposed bill rewrites this provision to instead authorize the CPO to participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of goods or services with one or more other states or local governments in accordance with an agreement entered into between the participants. All such cooperative purchasing would be awarded through full and open competition and pursuant to policies or rules and regulations adopted by the Procurement Commission.

Under Tenn. Code Ann. § 12-3-302 the state is entitled to audit the books and records of a contractor or subcontractor, to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records must be maintained by the contractor or subcontractor for three years from the date of final payment, unless a shorter period is otherwise authorized in writing. The proposed bill requires, after July 1, 2013, that all contracts include a provision with this statutory requirement and said provision cannot be amended or removed without the written consent of the Comptroller of the Treasury.

Under Tenn. Code Ann. § 12-3-314 the CPO must permit contracts for telecommunications and information technology goods and services a limitation of liability of at least two times the value of the contract as long as the limitation of liability does not apply to intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. However, if the CPO determines that it is necessary to protect the interests of the state, the CPO may petition the Procurement Commission to approve contractor liability in excess of two times the value of the contract. If the Commission agrees with the CPO, it may approve such a higher liability amount. The proposed bill revises who would increase the limitation of liability to instead specify that if the CPO determines that it is necessary to protect the interests of the state to increase the limitation of liability, then the CPO, the Comptroller of the Treasury, and Commissioner of Finance and Administration may increase the limitation of liability of the contractor to an amount in excess of two times the value of the contract. Furthermore, the proposed bill specifies that the purpose of limiting the liability of the purchase of goods and services is to limit the monetary damages recoverable by the state in a claim or legal action against its contractor, and the bill does not authorize any further limitation on the legal rights of the state, does not constitute a waiver of sovereign immunity of the state, and does not authorize a cause of action against the state in any jurisdiction.

Tennessee Code Ann. § 12-3-704 authorizes the CPO to satisfy any requirement for mailing by distributing solicitations electronically. The proposed bill requires that such electronically distributed solicitations also be posted to the CPO's Internet site.

Under Tenn. Code Ann. §12-3-803 a "Tennessee small business" is defined as a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee, and has total gross receipts of no more than \$10 million averaged over a three-year period and employs no more than 30 persons on a full-time basis. The proposed bill revises the current definition of "Tennessee small business" and adds a new definition for "small business" to specify that it is either a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee, and has total gross receipts of no more than \$10 million averaged over a three-year period or employs no more than 30 persons on a full-time basis.

Tennessee Code Ann. § 4-56-109 defines "immediate family" relative to conflict of interest as a spouse or minor child living in the household. The proposed bill expands the definition to include dependent children, stepchildren, or relatives related by blood or marriage.

Under Tenn. Code Ann. § 12-3-908 in order for non-admitted surplus lines carriers to be eligible for consideration under this section, at least two admitted carriers must have declined to submit a proposal, and the non-admitted carriers must, among other conditions, have a minimum A.M. Best financial strength rating of A- and an A.M. Best financial size category of no less than VI. The proposed bill revises the minimum A.M. Best financial strength rating to “A” rather than “A-”.

Tennessee Code Ann. § 12-3-203 requires multi-step sealed bidding on the acquisition of departmental computer systems involving the purchase of hardware and the development of application software and authorizes such bidding on any acquisition, subject to the approval of the CPO and notice of such procurements posted on the CPO’s Internet site. The proposed bill deletes these provisions.

Tennessee Code Ann. § 12-3-218 authorizes the Department of General Services to use the best value procurement methodology when determined to be in the best interest of the state and establishes various provisions regarding such procurement methodology. The proposed bill removes the provisions regarding the best value procurement methodology.

Tennessee Code Ann. §12-3-1101 establishes the State and Local Government Advisory Committee to monitor all initiatives related to the use of the Internet for purchasing by state agencies and local governments and to advise the General Assembly of any needed changes in law. The proposed bill deletes the Committee and all provisions regarding such Committee.

#### FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

**SUMMARY OF AMENDMENT (006318):** Deletes all language after the enacting clause. Replaces references to the Department of General Services” and “Department of Finance and Administration” with the “Central Procurement Office”; replaces “Commissioner of General Services” and “Commissioner of Finance and Administration” with “Chief Procurement Officer”; replaces “supplies, materials, and equipment” with “goods and services”; replaces “department, institution, or agency” with “state governmental agency”; replaces “bids” with “solicitations”; and “bidders” with “respondents.”

Tenn. Code Ann. § 4-56-103 requires the Chief Procurement Officer (CPO) to provide minutes of protest proceedings to each State Protest Committee member and to the Comptroller of the Treasury (COT), and to post the final determination within 15 business days on the public procurement web site.

Under Tenn. Code Ann. § 12-3-107 the CPO is required to adopt rules and regulations for certain purposes regarding procurement and to submit such rules and regulations to the Procurement Commission for approval. The proposed bill as amended deletes the requirement that the CPO

submit such rules and regulations for Commission approval and instead specifies that such matters regarding procurement would be the power and the duty of the CPO.

Tenn. Code Ann. § 12-3-107 also contains provisions for the transfer, distribution, and sale of surplus supplies, materials, and equipment. The proposed bill as amended deletes such provisions.

Tenn. Code Ann. § 4-56-107 clarifies the criteria for contract amendments that are subject to the Fiscal Review Committee (FRC) review. Specifies if the CPO or the delegated state agency is unable to determine whether proposed contracts or amendments would be subject to FRC review, the CPO or delegated state agency is required to contact FRC staff for such determination. Deletes requirement for FRC staff to provide agencies with policies developed by the FRC regarding such amendments.

Tenn. Code Ann. §4-56-108 requires the COT to review and approve non-competitive procurements, contracts, grants, and other related documents prior to the public posting of such procurements. Requires the COT to review and approve after posting any amendments, after recommendation for award, and prior to execution of the contract as applicable for the following: (1) delegation of procurement or contract authority by the CPO. All initial, reduced, or revoked delegations shall be reported to the COT. All periodic review of purchasing activities of any state agency granted such delegation shall be provided to the COT; (2) procurement and contracts for goods and services where authority exists under both the State Building Commission and the CPO to procure and contract; (3) audit services procurement and contracts; (4) cooperative agreements; (5) fee for service procurement or contracts and grant contracts with a maximum liability over \$5 million dollars which may be increased or decreased by action of the Procurement Commission; (6) fee for service procurement or contracts for new or replacement information systems and technical infrastructure projects for goods and services over \$500,000 which may be increased or decreased by the Procurement Commission; (7) procurement or contracts that would utilize noncompetitive negotiations with a maximum liability over \$250,000 which may be increased or decreased by the Procurement Commission. Prohibits a state agency from using competitive or noncompetitive negotiation unless such procurement is performed by the CPO; and (8) procurement or contracts for which the State would receive revenue, that would incur no cost, that proposes a term that exceeds 60 months, that propose a limitation of liability that is less than two times the maximum liability, that proposes to change the records, annual report and audit, or monitoring provisions, that would provide for the negotiation of a necessary, mandatory, or standard contract clause, that would provide that a cost proposal may be evaluated contemporaneously with or prior to evaluation of the technical proposal, that provides for an automatic price escalator, and any other procurements, contracts, or other items as may be directed by the Commissioner of Finance and Administration or by the Procurement Commission. Specifies that without limitation of the audit authority of the COT, the Comptroller is authorized to examine any documents under the authority of the CPO.

Requires cancellation of procurements or rejection of all responses to a procurement to be documented in accordance with rules and regulations, standards, policies and procedures as approved by the Procurement Commission, and requires the reason for the cancellation or

rejection of all bids for a procurement to be provided to the COT within three business days after such determination.

Requires any protest after notice of intent to award by an aggrieved respondent received by the CPO or the Protest Committee to be filed with the COT within three business days. Requires all responses to the aggrieved respondent regarding the protest whether allowed or not, to be filed with the COT at the same time such responses are provided to the aggrieved respondent.

Requires contracts to contain, on the last page of the secured document, the signature and approval date of all required approves to be a fully executed document and for the release of a purchase order against the contract. Authorizes the COT to have view access to any information or data from any system housing procurement and related contract data, information, and processes.

Requires the CPO to post on the single procurement web site reports or data queries, subject to approval by the COT, as to format and time interval for updates. Such reports shall include, but are not limited to, the following: (1) noncompetitive, sole source, or propriety contracts; (2) cancellation of procurements or contract awards; (3) cancellation of contracts before term extension or for cause; (4) protests to the CPO and Protest Committee (5) emergency procurements and contracts (6) contracts with term extensions beyond 60 months; (7) rule exceptions approved by the CPO; and (8) persons or entities that are prevented from contracting or submitting a response to a procurement.

Under Tenn. Code Ann. §12-4-110 purchases by and for the legislative department, the University of Tennessee (UT), the state university and community college system, and state technical institutes, and contracts awarded by the SBC pursuant to Tenn. Code Ann. § 4-15-102 are exempt, subject to the policies of the Procurement Commission, from the operation of the procurement law. The proposed bill specifies that exemption includes purchases and contracts by the legislative and judicial branches. Adds language that specifies if there is a question whether a contract or procurement required SBC or CPO approval, the CPO and the State Architect shall determine in writing the procurement method or the contract form that is in the best interest of the state. Any such agreement reached by the CPO and the State Architect shall be subject to approval by the Comptroller of the Treasury.

Authorizes any and all state entities exempt from the requirements of this part, as well as any private nonprofit institution of higher education chartered in Tennessee to procure goods or services under this Chapter through the Central Procurement Office.

Under Tenn. Code Ann. § 12-4-106 contracts by municipal and public corporations of the state, for legal services, fiscal agent, financial advisor or advisory services, educational consultant services, and similar services by professional persons are not based upon competitive bids, but are awarded on the basis of recognized competence and integrity. The proposed bill as amended extends this provision regarding such professional services to apply to all state entities, instead of only to municipal and public corporations of the state.

Tenn. Code Ann. § 12-3-133 requires each state agency to submit to the CPO an annual acquisition plan for the upcoming fiscal year, by July 1 of each year. The proposed bill as amended requires that such plan be submitted by "April 1", instead of "July 1", of each year and requires that such plan be submitted to the Comptroller, in addition to the CPO. Additionally, the proposed bill as amended authorizes an agency to amend or supplement its acquisition plan before the end of a given fiscal year for unforeseen circumstances pursuant to rules, regulations and policies adopted by the Commission.

Under Tenn. Code Ann. § 12-4-110 any personal services, professional services or consultant services contract entered into by an executive department or agency of the state government must be executed by the head of such department or agency and approved by the CPO. Contracts calling for expenditures from appropriations of more than one fiscal year must be approved by the COT. The proposed bill as amended deletes this provision. Also, current law requires such contracts for financial management or accounting services to be approved by the COT. The proposed bill as amended revises this provision and states such approval must be by the Commissioner of Finance and Administration.

Under Tenn. Code Ann. § 12-4-110 contracts of the University of Tennessee (UT) and the state university and community college system need not be approved by the CPO, but they shall be subject to applicable provisions of the rules described in Tenn. Code Ann. § 12-4-109. The proposed bill as amended revises this provision and specifies that all state colleges and universities operated by the Board of Trustees of UT or the state board of regents are subject to the rules and policies promulgated by the central procurement office and approved by the Procurement Commission.

Under Tenn. Code Ann. § 12-4-110 contracts executed or proposed to be executed for more than 12 months must contain a provision giving the state the right of cancellation at any time with no more than one year's notice, and at the end of any fiscal year without notice, in the event that funds to support the contract become unavailable. The proposed bill as amended states such contract may contain a provision giving the state the right of cancellation for convenience for periods of time established by the CPO and deletes the language "at any time with no more than one year's notice" from such provision.

Under Tenn. Code Ann. § 12-4-122(g), states any religious organization that contracts to provide goods, services, or assistance funded under any program is subject to the same rules as other contractors to account in accordance with generally accepted auditing principles for the use of moneys provided under the program. The proposed bill as amended subjects such religious organization to audit by the COT.

Tenn. Code Ann. § 12-3-203 authorizes the CPO to reject all bids for a certain purchase only for the following reasons: unreasonably high prices, error in invitation to bid, cessation of need, unavailability of funds, or for any other reason approved by the Procurement Commission. The proposed bill as amended deletes the language "any other reason approved by the Procurement Commission" and replaces it with "any other reason determined to be in the best interest of the state".



Requires all cancellation of awards or contracts to be filed with the COT. Under Tenn. Code Ann. § 12-3-203, all decisions to permit the correction or withdrawal of responses, or cancel awards or contracts based on response mistakes, shall be supported by a written determination made by the CPO. The proposed bill as amended requires such determination to be filed with the COT.

Tenn. Code Ann. § 12-3-204 authorizes the Procurement Commission to allow the director of purchases to establish an informal purchasing procedure, including the solicitation of telephone bids, for purchases not exceeding the amount established by the Commission. Such amount may not exceed \$25,000, if the Commission unanimously agrees upon the amount, and may not exceed \$10,000, if the Commission does not unanimously agree on a higher amount. The proposed bill as amended authorizes the Procurement Commission to allow the CPO to establish informal solicitation procedures for procurements. The maximum amount of the procurement would be \$50,000 or less, if all of the members of the Commission agree.

Under Tenn. Code Ann. §12-3-210 any procurement of \$50,000 or less must be approved by the CPO and be made without requisitioning such goods or services through the department, if a source of supply has not otherwise been established. All such procurements must be posted on the Procurement Office's Internet site and must provide certain information, including the status of the order. This bill as amended removes the requirement that such procurements be approved by the CPO and removes the requirement that the information posted on the web site include the status of the order. Currently, such purchases that exceed \$100 or a higher amount, if the Procurement Commission unanimously agrees upon the amount, must, whenever practical, be based upon at least three competitive bids and be made in accordance with the procurement law. The proposed bill as amended removes this provision. The proposed bill as amended authorizes the Procurement Commission to allow the CPO to establish small purchase procedures. The maximum amount of the purchases would be \$10,000 or less, if all the members of the Procurement Commission agree.

Requires all emergency purchases to be posted on the single public Internet web site in such form as prescribed by the Procurement Commission.

Under Tenn. Code Ann. § 12-3-208 a contract may be entered into by competitive negotiation "only in cases when the state is unable to obtain needed goods and/or services by competitive sealed bid". The proposed bill as amended revises this provision to instead specify that a contract may be entered into by competitive negotiation "when it is determined by the CPO that it is in the best interests of the state". Each use of competitive negotiation shall be subject to approved by the CPO and the COT.

Tenn. Code Ann. § 12-3-216 authorizes the CPO to enter into cooperative purchasing agreements with other states, local governments and higher education institutions, as long as each contract is established through competitive sealed bids and each procurement has the prior approval of the Procurement Commission. The proposed bill as amended rewrites this provision to instead authorize the CPO to participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of goods or services with one or more other states or local governments in accordance with an agreement entered into between the participants. All

such cooperative purchasing would be awarded through full and open competition and pursuant to policies or rules and regulations approved by the Procurement Commission.

The proposed bill as amended requires the CPO to provide the final determination of the resolution of a protest to the COT as well as the protestor, and the Protest Committee. Requires the CPO to provide the minutes of the protest proceedings to each Protect Committee member and to the COT as well as posting the final determination with 15 business days to the Procurement web site.

Under Tenn. Code Ann. § 12-3-302 the state is entitled to audit the books and records of a contractor or subcontractor, to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records must be maintained by the contractor or subcontractor for three years from the date of final payment, unless a shorter period is otherwise authorized in writing. The proposed bill as amended requires, after July 1, 2013, that all contracts include a provision with this statutory requirement and said provision cannot be amended or removed without the written consent of the COT.

Under Tenn. Code Ann. § 12-3-314 the CPO shall not authorize limitation of the liability of a contract unless the CPO determines that allowing the limitation of liability is necessary to prevent harm to the State from failing to obtain the goods or services sought, or from obtaining the material at a higher cost, if the State refused to allow a limitation of liability; the limitations and any alternative contract language are commercially reasonable in light of the risks to the State created by the type of goods or services purchased and the purposes for which they will be used; and the State will not agree to limit the liability of any contractor for intentional torts, criminal acts, or fraudulent conduct. The proposed bill as amended specifies the CPO shall not authorize such limitation of liability of a contractor to an amount less than two times the value of the contract under the CPO has made such a determination and the COT approves.

Under Tenn. Code Ann. § 12-3-314 the CPO must permit contracts for telecommunications and information technology goods and services a limitation of liability of at least two times the value of the contract as long as the limitation of liability does not apply to intentional torts, criminal acts, fraudulent conduct or acts or omissions that result in personal injuries or death. However, if the CPO determines that it is necessary to protect the interests of the state, the CPO may petition the Procurement Commission to approve contractor liability in excess of two times the value of the contract. If the Commission agrees with the CPO, it may approve such a higher liability amount. The proposed bill as amended revises who would increase the limitation of liability to instead specify that if the CPO determines that it is necessary to protect the interests of the state to increase the limitation of liability, then the CPO, the COT, and Commissioner of Finance and Administration may increase the limitation of liability of the contractor to an amount in excess of two times the value of the contract. The proposed bill as amended deletes “for telecommunications and information technology good and services” and substitutes instead “goods and services”. Furthermore, the proposed bill as amended specifies that the purpose of limiting the liability of the purchase of goods and services is to limit the monetary damages recoverable by the state in a claim or legal action against its contractor, and the bill does not authorize any further limitation on the legal rights of the state, does not constitute a waiver of

sovereign immunity of the state, and does not authorize a cause of action against the state in any jurisdiction.

Tenn. Code Ann. §12-3-703 requires the Department of General Services (DGS) to establish and maintain from the permanent register of bidders a permanent mailing list, which shall include the names and mailing addresses of all qualified bidders. Authorizes DGS to use a selective system in choosing the bidders to whom invitations to bidders will be sent on any contract or purchase. The proposed bill as amended deletes the authority of the CPO to use a selective system in choosing the respondents to whom solicitation will be sent on any contract or purchase.

Tenn. Code Ann. § 12-3-704 authorizes the CPO to satisfy any requirement for mailing by distributing solicitations electronically. The proposed bill as amended requires that such electronically distributed solicitations also be posted to the CPO's Internet site.

Under Tenn. Code Ann. §12-3-803 a "Tennessee small business" is defined as a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee, and has total gross receipts of no more than \$10 million averaged over a three-year period and employs no more than 30 persons on a full-time basis. The proposed bill as amended revises the current definition of "Tennessee small business" and adds a new definition for "small business" to specify that either is a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee, and has total gross receipts of no more than \$10 million averaged over a three-year period or employs no more than 99 persons on a full-time basis.

Tenn. Code Ann. § 4-56-109 defines "immediate family" relative to conflict of interest as a spouse or minor child living in the household. The proposed bill as amended expands the definition to include dependent children, stepchildren, or relatives related by blood or marriage.

Tenn. Code Ann. § 12-3-203 requires multi-step sealed bidding on the acquisition of departmental computer systems involving the purchase of hardware and the development of application software and authorizes such bidding on any acquisition, subject to the approval of the CPO and notice of such procurements posted on the CPO's Internet site. The proposed bill as amended deletes these provisions.

Tenn. Code Ann. § 12-3-218 authorizes the DGS to use the best value procurement methodology when determined to be in the best interest of the state and establishes various provisions regarding such procurement methodology. The proposed bill as amended removes the provisions regarding the best value procurement methodology.

Tenn. Code Ann. §12-3-1101 establishes the State and Local Government Advisory Committee to monitor all initiatives related to the use of the Internet for purchasing by state agencies and local governments and to advise the General Assembly of any needed changes in law. The proposed bill as amended deletes the Committee and all provisions regarding such Committee.

## **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

### **Unchanged from the original fiscal note.**

Assumptions for the bill as amended:

- Any revisions to the review and approval required by the Comptroller of the Treasury will not result in a significant fiscal impact and can be accomplished within existing resources.
- According to the Department of General Services (DGS), no members of the State and Local Government Advisory Committee received reimbursement for travel. Deleting such Committee will not have a fiscal impact to the state.
- According to DGS, the proposed bill does not have a fiscal impact to the Department. Estimate assumes deleting provisions relative to multi-step sealed bidding for computer hardware and software, and the provisions relative to best value procurement methodology will not have a fiscal impact to the state.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

/lsc